

**1.5(6) Application for season approvals.** This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

**1.5(7) Manufacturers and distributors license application.** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. (Refer to 491—Chapter 11 for additional information.)

**491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats.** Rescinded IAB 9/29/04, effective 11/3/04.

**491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates.** The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

**1.7(1) Compliance.** The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

**1.7(2) Gaming integrity.** The commission will consider whether the proposed operation would ensure that gaming is conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character.

**1.7(3) Economic impact and development.** The commission will consider:

*a.* The amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on the facility's operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

*b.* The level of financial and other support the proposed operation will provide to the community in order to improve the quality of life of the residents of the community.

*c.* The viability and overall net benefit of the proposed operation to the state gaming industry, taking into consideration:

(1) Investment versus projected adjusted gross revenue.

(2) Impact on existing operators' adjusted gross revenue versus existing operators' ratio of adjusted gross revenue to investment.

(3) Ratio of equity to total investment and whether the proposed project is adequately and properly financed.

(4) Percent of projected adjusted gross revenue from underserved markets.

- (5) Percent of projected adjusted gross revenue from existing Iowa operators.
- (6) Stability and reliability of out-of-state market(s).
- d. The benefits to Iowa tourism.
- e. The number and quality of employment opportunities for Iowans.
- f. The development and sale of Iowa products.
- g. The number and types of developments and amenities associated with the proposed operation in addition to the gaming floor.

1.7(4) *Efficient and safe operation.* The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of the facility including providing adequate security for employees and patrons. Adequate employment to serve patrons' needs, facility scope and design, parking facilities, access to cashier windows, concessions, and restrooms will be considered.

1.7(5) *Community support.* The commission will consider support for the proposed project within the community in which a proposed facility is to be located.

1.7(6) *Nurture of the racing industry.* The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high-quality racing in Iowa. The commission will also consider if the proposed racetrack operation will maximize purses and is beneficial to Iowa breeders.

1.7(7) *Other factors.* The commission will consider such other factors as may arise in the circumstances presented by a particular application.

**491—1.8(17A,99D,99F) Granting of a waiver.** For purposes of this rule, a waiver or variance means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity. For simplicity, the term "waiver" shall include both a waiver and a variance.

1.8(1) *Scope of rule.* This rule outlines generally applicable standards and a uniform process for the granting of a waiver from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

1.8(2) *Applicability of rule.* The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

1.8(3) *Criteria for waiver.* In response to a petition completed pursuant to subrule 1.8(5), the commission may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the commission finds, based on clear and convincing evidence, all of the following:

- a. The application of the rule would impose an undue hardship on the entity for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any entity;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

1.8(4) *Filing of petition.* A petition for a waiver must be submitted in writing to the commission as follows:

- a. *License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.
- b. *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.